

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ISMAEL HERNANDEZ PADILLA,
ID #356764,

Petitioner,

V.

DIRECTOR, TDCJ-CID; GREG
ABBOTT; and CITY TOWN OR
MUNI OF DALLAS CO DALLAS TX

Respondents.

[illegible]

Civil Action No. 3:22-CV-00583-X-BN

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE
JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. [Doc. No. 6]. Instead of filing an objection, Padilla filed a notice of appeal to the Fifth Circuit. [Doc. No. 7]. The Court will construe the notice of appeal as an objection. But the notice of appeal appears to merely reiterate Padilla's motion. [Doc. No. 5]. It does not raise a specific objection to the magistrate judge's findings, conclusions, or recommendation.¹ The Court has reviewed the magistrate judge's recommendation *de novo* and finds no errors.

¹ “In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge’s findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.” Doc. No. 6 at 4.

Accordingly, the Court **ACCEPTS** the findings, conclusions, and recommendation of the United States Magistrate Judge.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the Court **DENIES** a certificate of appealability to the extent one is required to appeal in this case. The Court adopts and incorporates by reference the magistrate judge's findings, conclusions, and recommendation filed in this case in support of its finding that Padilla has failed to show that reasonable jurists would find "it debatable whether the [construed] petition states a valid claim of the denial of a constitutional right" or "debatable whether [this Court] was correct in its procedural ruling."²

But, insofar as Padilla does appeal, the Court prospectively **DENIES** Padilla leave to appeal *in forma pauperis* and **CERTIFIES**, under 28 U.S.C. § 1915(a)(3), and as fully explained in the applicable findings, conclusions, and recommendation that any appeal would not be taken in good faith.

Petitioner may challenge this finding under *Baugh v. Taylor*³ by filing a motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit, within 30 days of this order.⁴

² *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

³ 117 F.3d 197 (5th Cir. 1997),

⁴ *Cf. Dobbins v. Davis*, 764 F. App'x 433, 434 (5th Cir. 2019) (per curiam) (applying *Baugh* to state prisoner's appeal in federal habeas action).

IT IS SO ORDERED this 6th day of May, 2022.

A handwritten signature in black ink, appearing to read "Brantley Starr", written over a horizontal line.

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE